

agree with NCTA and NAB that the obligation to caption advertisements should be placed on the advertisers, rather than the stations exhibiting those advertisements. See Comments of NTCA at 25; NAB at 2-3. However, stations should continue to be obligated to ensure the provision of those captions.

According to the American Association of Advertising Agencies (AAAA), the increase in captioned commercials over recent years illustrates that a mandate for such captioning is not necessary. Comments of AAAA at 2. However, many nationally broadcast programs sponsored by major corporations continue to exhibit commercials without captions. For example, several advertisements aired with the Academy Awards on March 24, 1997, including a McDonald's commercial, were not captioned. Insofar as an economic or undue burden test could not be met in this and other similar situations, such advertisers/programmers should not qualify for a Commission exemption.

#### 4. Sports Programming

We disagree with the assertion that sports telecasts are accessible because they are "inherently visible." Comments of NAB at 16. Any sports aficionado can confirm that much of the enjoyment in watching a sporting event comes from the commentary accompanying such programming. Similarly, the assertion by DIRECTV, that captioning of live sporting events must be performed at the source of the event, is incorrect, as such captioning often has been performed via telephone lines hooked into the programming source. See Comments of DIRECTV at 9.

ABC urges the FCC to exempt regional and local sports programming because, among other things, the distribution and viewership of those of such shows is low. Comments of ABC at 13. Yet ABC itself states that it expects the marketplace to cause the industry to ultimately

caption these programs so that the maximum number of viewers can be reached, a statement that reveals the considerable public demand for such programming. Id. at 4. In a similar vein, NAB has noted that “[p]roviding access to local sports provides significant public interest benefits.” Comments of NAB at 15. Certainly a blanket exemption for all regional and local sports programming would eliminate a critical source of program viewing for great numbers of individuals who place high priority on such access. Again, history shows that marketability alone does not presage increased captioning. Thus, we urge that exemptions for such programming be narrowly carved<sup>24</sup>, and that where exemptions are granted, there be requirements in place for greater use of textual or graphic material.

#### 5. Weather Programming

In its NPRM, the Commission has concluded that it would be inappropriate to exclude weather programming in its general exemptions because “weather conditions can and often do directly affect health and safety concerns.” NPRM at ¶83. Yet a major national captioning service responding to the NPRM has pointed out that the vast majority of weather reports are not captioned through ENR. Until such time that real time captioning is required of all local news stations (in our initial comments, we proposed that this time period be one to two years), we urge the Commission to require local news stations to provide scripts for weather reports that are included in the TelePrompter text and converted to captioning.

Although local weather broadcasts on the weather channel are in fact provided in text, weather reports for other regions of the country are not. Deaf and hard of hearing individuals

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<sup>24</sup> For example, NBC argues that requiring captioning for regional sporting events will require more live captioners that are currently available. Comments of NBC at 5. At most this may merit

need access to such information for their travel plans in the same way that other viewers depend on this information. Until such time that text is added to weather reports outside the local area, captioning should be required for those reports. See Comments of Ameritech at 19 (“[w]eather forecast programming should not be exempted because viewers may depend on such captioning to protect their health and safety”).

#### 6. Music Programming

The Recording Industry Association of America (RIAA) has acknowledged that “exempting music video[s] based on economic burden would not be appropriate for the vast majority of [their] member companies.” Comments of RIAA at 4. Nevertheless, they seek a general exemption from the captioning rules for reasons that are, at best, difficult to comprehend. First, they suggest that an exemption is in order because music videos are somehow different from other programming, that is, they “depart by definition from a central narrative or dialogue” and their lyrics often are “subordinate to the actual music.” Id. at 3. Suffice it to say that this statement is highly questionable given the time and effort poured into the development of lyrics by musicians as well as the production of those videos. Second, the RIAA proposes an exemption because, they say, lyrics may sometimes be “unintelligible or non-literal.” Id. The smaller portion of lyrics that are unintelligible are incomprehensible to everyone, and can be noted as such in the captions. Moreover, to suggest that deaf and hard of hearing individuals should not be able to read lyrics which are non-literal is to suggest that they should not be able to determine for

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a delay in requiring such programs to be captioned, to allow the supply of live captioners to catch up with demand, rather than an absolute exemption from the captioning requirements.

themselves the symbolism such lyrics might hold. This is a form of attitudinal discrimination which should not be tolerated.<sup>25</sup>

## VII. Complaints

We agree with NCTA that the FCC should resolve petitions for exemptions expeditiously, especially if viewers will be denied access to captioning during the time that elapses before the resolution of those petitions. See Comments of NCTA at 31, 32. We also agree with A&E that the Commission should conduct an inquiry, followed by a report, early in the implementation schedule "to ensure that the industry is on track" with respect to implementation of the captioning requirements. Comments of A&E at 21.

We also agree with Media Captioning Services that a petition for an undue burden exemption should be placed on the FCC Web site for thirty days and that, in addition to the regular avenues of responding to such petitions, individuals be permitted to file objections to an FCC electronic mail/Internet point of contact. Comments of MCS at 17. Similarly we support the suggestion that the FCC post on its Web site a list of potential captioning difficulties, so that consumers can better understand the source (e.g. defective TV or cable equipment, weak signals, etc.) of particular captioning problems. This would enable consumers or the council proposed in our initial comments (see NAD comments at 29-30) to direct their complaints to the appropriate source, if so required under the final FCC rules.

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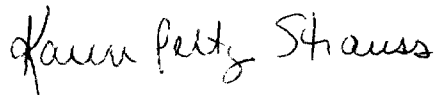
<sup>25</sup> Ameritech's comment that captioning of music videos should not be provided because some lyrics may be unintelligible when spoken but "patently offensive or potentially obscene" when captioned is ridiculous. Comments of Ameritech at 19. If a station would not want to be associated with such lyrics, as Ameritech suggests, then it should not be exhibiting those videos in the first place. Indeed, many such lyrics are already provided in the dust jackets of CDs and tapes; the fact that the lyrics are unintelligible when sung does not mean that persons watching those videos do not know that the lyrics contain explicit language.

We also propose that the FCC Web site contain information on the scope of the captioning requirements. It is apparent that these requirements are likely to be quite detailed. Consumers need to have ready access to information about the phase-in schedule, as well as any exemptions that may be granted, so they know whether a complaint that programming has not been captioned is valid. Finally, the Web site should contain information on the avenues of redress for captioning complaints, so that consumers have complete information about how their captioning grievances may be rectified.

#### VIII. Conclusion

Until such time that captioning is perceived as an integral part of video production, consumers are not likely to be granted the full access to video programming foreseen by the drafters of Section 713. We urge the Commission not to depart from the overall goal of that Section to make video programming accessible to all individuals who are deaf and hard of hearing. We thank the Commission for the opportunity to submit these reply comments and stand ready to assist the Commission in any way we can to accomplish the full intent of the Telecommunications Act of 1996.

Respectfully submitted,



Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, MD 20910-4500  
(301) 587-1788 Voice  
(301) 587-1789 TTY

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